Supreme Court, U.S.
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No. 05-851

In The
Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

vs.

CEDERICK CLEVELAND, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

To shield state and local agencies that provide emergency services from the adverse financial impact of the forty-hour overtime pay rule, § 207(k) of the Fair Labor Standards Act provides a special overtime pay schedule for emergency responders who regularly work more than forty hours per week. Under 29 U.S.C. § 203(y), the schedule expressly applies to firefighters and paramedics who are trained in fire suppression, have the legal authority and responsibility to engage in fire suppression, and are engaged in either "the prevention, control, and extinguishment of fires *or* response to emergency situations where life, property, or the environment is at risk." 29 U.S.C. § 203(y) (2000) (emphasis added).

The special overtime pay schedule applies to emergency responders who are trained in both firefighting and paramedic skills and are assigned to work on firefighting engines responding to fire-related emergencies.

Does the special overtime pay schedule also apply to such dual function personnel while they are assigned to work on paramedic ambulances and respond primarily to medical emergencies?

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, the following individuals are plaintiffs in the action and are respondents here:

Juan M. Achan, Luis F. Aldana, Dennis M. Archie, Anthony Arnado, Dennis Barnes, Jennifer Lynn Boscoe, Jason Braff, Brian T. Brooks, Jaime L. Brown, Michael E. Brown, Joshua L. Burton, Christopher Lee Carpenter, Armando Carranza, Heywood Cheng, Braxton Clark, Paul W. Clark, Ruel A. Cole, Juan R. Colson, Raymond R. Crawford, James D. Crites, Armando C. Cuevas, Douglas Dilks, Jeff M. Dodd, Dan Dragotto, Brian C. Dudley, William A. Dunn, Steve J. Encinias, Anthony Charles Ferro, Guadalupe G. Flores, Mark Wray Flot, Larry R. Ford, Timothy P. Freeman, Raymond A. Gallegos, Danny William Garrett, James David Gibson, Mark Glenchur, James R. Goldsworthy, Jeffrey G. Gonzalez, Christian P. Granucci, Edward J. Gutierrez, Benjamin R. Guzman, Josel Guzman, Sir R. Habersham, IV, Anthony Hardaway, Huston Herman, Alfred B. Hernandez, III, Rene Herrera, Ricky M. Herrera, Larry Hoerner, Kory Wayne Jackson, Larry Jackson, Roderic A. Jackson, Ronnie R. Jimenez, Jayson A. Johnson, Keith M. Johnson, Kevin Malcolm Johnson, Donald R. Jones, Garabed Karaoglanian, Kenneth L. Knighten, Joseph D. Lankau, Dale A. Lecesne, Robert Ledesma, Brian M. Lee, Robert W. MacInnes, David Malafronte, Joe G. Manzo, Dexter G. McDaniel, Michelle Marie McKee, Timothy K. McKee, Laurinda Meade, Joseph Menton, Christopher J. Moffatt, Donta T. Montgomery, Cecil Morris, Roger D. Morris, Carl S. Moskovitz, II, Aaron G. Mungaray, Alan C. Naeole, Donald

PARTIES TO THE PROCEEDINGS – Continued

P. Nash, II, James Nordquist, Dennis A. Ohligshlager, Drew Oliphant, Tyrone O'Shea, Patrick T. Oyama, Roy Allen Paige, David Pass, Norman M. Pate, Steven Keith Phillips, Brandi Pilato, William Ramsey, Steven G. Ravitz, Louis D. Richard, David T. Riles, John Rodriguez, Mark L. Rousseau, Brent Ruff, Shannon K. Saffo, Paul T. Semerjian, Richard Dwight Senneff, George Carr Smith, III, Stanley E. Smith, Paul E. Sorum, Brent Spankroy, Joseph St. George, Thomas W. Stafford, Carey Steiner, Dennis C. Stone, Michael J. Taylor, Michael D. Tobey, Abel J. Torres, Louis Torres, Catherine A. Utterback, John P. Vigil, Victor M. Villa, Donell C. Wible, Kenneth Wigchert, Erik D. Williams, and Mark R. Woolf.

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PETITION FOR WRIT OF CERTIORARI

The City of Los Angeles respectfully petitions for a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals in this case issued by the Honorable Judges H. Pregerson, J. Browning, and M. Berzon.

OPINIONS BELOW

The July 3, 2002 opinion of the district court is unreported and is reproduced at Appendix (App.) 21. The February 21, 2003 judgment entered by the district court is unreported and is reproduced at App. 40. The August 22, 2005 opinion of the Ninth Circuit Court of Appeals is reported at 420 F.3d 981 and is reproduced at App. 1. The October 4, 2005 order by the Ninth Circuit Court of Appeals is unreported and is reproduced at App. 46.

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on August 22, 2005. App. 1-3. The Court of Appeals denied a timely petition for rehearing and rehearing en banc on October 4, 2005. App. 46. This Court has jurisdiction under 28 U.S.C. § 1254(1) (2000).

STATUTES INVOLVED

Section 203(y) of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219 (2000), defines the "[e]mployee[s] in fire protection activities" who are subject

to a special overtime pay schedule set forth in § 207(k) of the Act:

> "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who –
>
> (1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and
>
> (2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

29 U.S.C. § 203(y).

Section 207(k) of the FLSA provides:

> (k) Employment by public agency engaged in fire protection or law enforcement activities.
>
> No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities . . . if –
>
> (1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or